

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number: 08215-540001
<p>I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.</p> <p>_____</p> <p>Date of Deposit</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Typed or Printed Name of Person Signing Certificate</p>	Application Number 10/802,409	Filed March 16, 2004
	First Named Inventor Paul N. Stoving et al.	
	Art Unit 2832	Examiner Marina Fishman
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record (Reg. No. 45,653)</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: right;"> <p>_____ /Diana DiBerardino/ Signature</p> <p>_____ Diana DiBerardino Typed or printed name</p> <p>_____ (202) 783-5070 Telephone number</p> <p>_____ September 25, 2006 Date</p> </div> </div> <p style="font-size: small; margin-top: 20px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below'.</p>		
<input checked="" type="checkbox"/> Total of 6 forms are submitted.		

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Paul N. Stoving et al.	Art Unit	: 2832
Serial No.	: 10/802,409	Examiner	: Marina Fishman
Filed	: March 16, 2004	Conf. No.	: 3843
Title	: VACUUM ENCAPSULATION HAVING AN EMPTY CHAMBER		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005, New Pre-Appeal Brief Conference Pilot Program, a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of examiners is requested because the rejections of record are clearly not proper and are without basis, in view of a clear legal or factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 1-5, 8, 18, 22, and 24-28 are pending, with claims 1 and 18 being independent. Claims 1-5, 8, 27 and 28 have been allowed. Claims 18, 22, and 24-26 have been rejected under 35 U.S.C. § 112, second paragraph. Claims 18 and 24-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,849,617 (Pflanz). Also, claims 18 and 24-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,168,414 (Kumbera) in view of Pflanz.

Applicant respectfully disagrees with, and hereby asks the panel to review and reverse, these rejections. Neither Kumbera, Pflanz, nor any combination of these two references, describes or suggests at least one feature recited by the rejected claims, namely, a tube provided through the seal and including cured liquefied encapsulation material to block the passage of air between an exterior of a seal and a cavity. Moreover, the rejection under 35 U.S.C. § 112, second paragraph is improper.

Discussion

Independent claim 18 reads:

A vacuum switching device comprising:

- a vacuum interrupter;
- a hollow housing adjacent to the vacuum interrupter;
- a seal provided around the vacuum interrupter and the hollow housing, the seal defining an air-filled cavity within the hollow housing; and
- a tube provided through the seal and including cured liquefied encapsulation material to block the passage of air between an exterior of the seal and the cavity.

Rejection of claims 18, 22, and 24-26 under 35 U.S.C. § 112, second paragraph

Claims 18, 22, and 24-26 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite. The Examiner seems to indicate that claim 18 is indefinite because it does not specify exactly where the cured liquefied encapsulation material is located with respect to the tube (see final Office action of Apr. 25, 2006 at page 2, lines 12-16) and that the limitation “cured liquefied encapsulation material” is vague and confusing (see final Office action of Apr. 25, 2006 at page 6, lines 11-14). Applicant disagrees. The claim term “including cured liquefied encapsulation material” is clear and definite, and is described in the specification. For example, the paragraph of the specification that begins at page 8, line 15, describes Figure 5 as illustrating that “[b]y a time that epoxy 128 has been fully injected into the mold 300 ... the needles 202 are plugged with cured epoxy” In another example, the paragraph that begins at page 6, line 18 describes Figure 2 as showing a tube 202 that has an inside diameter “small enough that epoxy cannot flow through the ... tube 202 without curing” In another example, Figure 4 shows a cross-section of the encapsulated vacuum assembly after the molding process is complete, including the plugged tube 202. Because the scope of claim 18 is clear and supported by the specification, claim 18 complies with 35 U.S.C. § 112, second paragraph. See MPEP § 2173.04. Accordingly, applicant respectfully requests reversal of this rejection.

Rejection of claims 18 and 24-26 in view of Pflanz

Claims 18 and 24-26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Pflanz. Applicant requests reversal of this rejection because Pflanz does not describe or suggest at least a tube provided through a seal and including cured liquefied encapsulation

material to block the passage of air between an exterior of the seal and a cavity, as recited in claim 18. The Examiner points to Pflanz' tube 24 to show a tube provided through a seal. However, Pflanz does not disclose that the tube 24 includes cured liquefied encapsulation material to block the passage of air between an exterior of the seal and a cavity, as recited in claim 18. Rather, Pflanz merely discloses that the tube 24 is used to remove air from a space 23 within a vacuum interrupter 10 "to the extent desired" and then the tube 24 is subsequently sealed by being brazed. See Pflanz at col. 2, lines 40-66 and Fig. 1. As is evident from this description and from the design in Fig. 1 of Pflanz, the tube 24 is not filled with cured liquefied encapsulation material, nor any other material, at any time to block air between the space 23 and an exterior of the interrupter 10. The tube 24 is merely sealed to itself by the brazing of the material of the tube. For at least these reasons, claim 18 is allowable over Pflanz. Claims 24-26 depend from claim 18 and are allowable for at least the reasons that claim 18 is allowable.

In the final Office action of April 25, 2006, the Examiner states that "[t]he Applicant has argued (page 9, first full paragraph, lines 9-10) 'Pflanz to disclose that the tube 24 includes cured liquefied encapsulation material.' Since none of the claim includes the argued limitation 'tube includes cured liquefied encapsulation material,' the relevance of this argument is not understood." See final Office action of Apr. 25, 2006 at page 6, lines 19-22.

The Examiner has quoted the applicant's argument out of context and misconstrued claim 18. First, the applicant argued, and maintains, that Pflanz does not disclose at least a tube provided through a seal and including cured liquefied encapsulation material to block the passage of air between an exterior of the seal and a cavity. See Reply to Action of December 1, 2005 at page 8, lines 1-3. Second, claim 18 clearly recites "a tube provided through the seal and including cured liquefied encapsulation material." Thus, applicant's argument that Pflanz does not describe or suggest a tube that includes cured liquefied encapsulation material is relevant.

Additionally, the Examiner indicates that claim 18 is being treated as if it were in product-by-process form. The Examiner asserts that "[t]he limitation 'sealed with cured encapsulation . . . ' is being treated as a product by process limitation." See Office action of Dec. 1, 2005 at page 3, line 25 to page 4, line 1 and final Office action of Apr. 25, 2006 at page 4, lines 6-7. However, as seen above, the term "sealed with cured encapsulation" is not recited in claim 18. This language was removed in response to the same rejection of claim 18 that the

Examiner made in the final Office Action of July 6, 2005. See the final Office Action of July 6, 2005 at page 5, lines 2-8. Thus, claim 18, as pending, is not in product-by-process form.

For at least these reasons, applicant respectfully requests reversal of this rejection.

Rejection of claims 18 and 24-26 over Kumbera in view of Pflanz

Claims 18 and 24-26 have been rejected under 35 U.S.C. § 103(a) as being obvious over Kumbera in view of Pflanz. Applicant requests reversal of this rejection because any possible combination of Kumbera and Pflanz would still fail to describe or suggest a tube provided through a seal and including cured liquefied encapsulation material to block the passage of air between an exterior of the seal and a cavity, as recited in independent claim 18.

The Examiner concedes that Kumbera does not disclose such a tube. The Examiner relies on Pflanz to show such a tube. However, while Pflanz shows a tube 24 that extends through the member 14, the tube 24 in Pflanz does not include cured liquefied encapsulation material. Rather, as discussed above, the tube 24 is merely sealed to itself once the space 23 is “evacuated to the extent desired.” See Pflanz at col. 2, lines 64-65. There is no indication in Pflanz that the tube 24 includes any type of encapsulation material.

For at least these reasons, claim 18 is allowable over Kumbera in view of Pflanz. Claims 24-26 depend from claim 18 and are allowable for at least the reasons that claim 18 is allowable, and for containing allowable subject matter in their own right.

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In view of the above, the rejections of claims 18, 22, and 24-26 should be reversed. These claims are in condition for allowance. A formal notice of allowance is thus respectfully requested.

Please apply any charges or credits to deposit account 06 1050.

Respectfully submitted,

Date: September 25, 2006

/Diana DiBerardino/

Diana DiBerardino

Reg. No. 45,653

Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331